

Health Care Policy and Financing

Agency Number: UHA

Contract Routing # \_\_\_\_\_

**DRAFT**

**LOCAL GOVERNMENT INPATIENT AND OUTPATIENT HOSPITAL PAYMENT**

**CONTRACT**

THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the State of Colorado, for the use and benefit of the Department of Health Care Policy and Financing, 1570 Grant St., Denver, Colorado 80203, hereinafter referred to as the State, and City of Brighton, located at 22 South 4<sup>th</sup> Avenue, Brighton, Colorado 80601, hereinafter referred to as the Contractor.

WHEREAS, authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in the Colorado Financial Reporting Systems (COFRS) Fund Number \_\_\_\_\_, Appropriation Code Number \_\_\_\_\_; and Encumbrance Number \_\_\_\_\_;

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies;

WHEREAS, the Contractor's offer was selected in accordance with State law as a result of RFP Number Not Applicable; and their response; and

WHEREAS, the statutory authority for this payment is set forth in Sections 29-28-101 through 29-28-103 and Section 26-4-427, Colorado Revised Statutes (C.R.S.).

NOW THEREFORE, subject to the terms, conditions, provisions and limitations contained in this contract, the State and the Contractor agree as follows:

I. DEFINITIONS (if applicable)

Not Applicable

II. SCOPE OF WORK

1. Responsibilities of the Contractor

- a. **Applicable Laws and Rules:** To abide by all applicable State and federal laws and rules, including, but not limited to the provisions of the Department's regulations found in the Code of Colorado Regulations (CCR) at 10 CCR 2505-10, Section 8.903.C.17 and 8.903.C.18 as they now exist or may hereafter be amended.

- b. **Program Guidelines:** To abide by all the terms and provisions in the “Local Government Provider Fees and Local Government Inpatient and Outpatient Hospital Payments – Manual for Local Governments and Hospital Providers”, as published and amended by the Department.

2. Responsibilities of the State

- a. **Applicable Laws and Rules:** To abide by all applicable State and federal laws and rules, including, but not limited to the provisions of the Sections 29-28-101 through 29-28-103 and Section 26-4-427, Colorado Revised Statutes (C.R.S.), to provide supplemental Medicaid payments to partially reimburse for the costs associated with providing hospital services to Medicaid and other low-income clients.

### III. GENERAL PROVISIONS

1. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the document in the following order of priority:

1. Colorado Special Provisions, pages \_\_\_\_\_ to \_\_\_\_\_.
2. Contract, pages 1 to \_\_\_\_\_.
3. The Contractor’s proposal, Exhibit B.

2. Performance Period

The contract shall be effective upon approval by the State Controller, or designee, or on April 1, 2008, whichever is later, and shall continue in effect until it is terminated for default, lack of funding, by law, or at the convenience of the parties. The Contractor agrees to provide the Department at least sixty (60) days prior written notice in the event of termination of participation in the Program for any reason. The State shall have the right to terminate this contract by fiving the Contractor sixty (60) days prior written notice. In the event of such termination, the Contractor shall be obligated to return any payment advanced under the provisions of the Contract. If, through any cause, the Contractor shall fail to fulfill, in a timely and proper manner, its obligations under this Contract, or if Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract for cause by giving written notice to Contractor of its intent to terminate and at least ten (10) days opportunity to cure the default or show why termination is otherwise not appropriate. In the event of such termination, Contractor shall be obligated to return any payment advanced under the provisions of the Contract. To the extent

that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the named Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any third person.

3. Holdover Provision

In the event the Department desires to continue the services and a replacement contract has not been fully executed by the end date of this contract, the Department, upon written notice to the Contractor, may unilaterally extend this contract for a period of up to two (2) months. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. However, this extension shall terminate at the end of the two-month period or when the replacement contract is signed by the State Controller or an authorized delegate.

4. Compensation/Maximum Payable

- a. Payment pursuant to this contract will be made as earned, in whole or in part, from available funds encumbered for the within-described services. The Department will send Contractor notification of reimbursement applicable to Contractor for each State fiscal year. The Department will send to Contractor, without prior notice, notification of any changes in the reimbursement applicable to Contractor for a current State fiscal year. The Contractor agrees to transfer/contribute funds to the State in an amount specified in the Department's notification of the reimbursement each year, as modified from time to time. If the Contractor reduces its transfer/contribution under this provision for any reason, the State shall have the right to withhold payment and/or have the right to terminate this contract due to default/cause.
- b. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

5. Federal Funding

This contract is subject to and contingent upon the continuing availability of Federal funds for the purposes hereof.

6. Billing/Payment Procedure

Unless otherwise provided, and where appropriate, the State shall establish billing procedures and pay the Contractor the contract price or rate for services performed and accepted pursuant to the terms of this contract, based on the submission of statements on forms and in a manner prescribed by the State. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation shall be recovered from the Contractor by one or more of the following options:

- a. Deduction from subsequent payment under this contract or other contracts between the State and the Contractor;
- b. Requirement of Contractor to make repayment to the Department of said excess payment within sixty (60) days of written demand by the Department;  
or
- c. Recovery of such excessive payments by other legal means.

7. Legal Authority

The Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Contractor to its terms. The person(s) executing this contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this contract.

8. Inspection and Acceptance

The State reserves the right to inspect services provided under this contract at all reasonable times and places during the term of the contract. "Services" as used in this clause include services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with contract requirements, the State may require the Contractor to perform the services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by reperformance, the State may (1) require the Contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the Contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

9. Remedies

In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Contractor. These remedial actions are as follows:

- a. Suspend Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
- b. Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- c. Request the removal from work on the contract of employees or agents of the Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
- d. Deny payment for those services or obligations which have not been performed and which, due to circumstances caused by Contractor, cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State.
- e. Terminate the contract for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

10. Termination for Convenience

The State may terminate this contract at any time the State determines that the purposes of the distribution of State moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered.

If the contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services satisfactorily performed bear to the total services of the Contractor covered by this contract, less payments of compensation previously made, provided, however, that if less than sixty percent (60%) of the services covered by this contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the Contractor during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the Termination for Default/Cause provision shall apply.

11. Termination for Default/Cause

If, through any cause, the Contractor shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Contractor of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Contractor shall be obligated to return any payment advanced under the provisions of this contract.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payment to the Contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Contractor is determined.

If after such termination it is determined, for any reason, that the Contractor was not in default, or that the Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

12. Insurance

- a. The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:



- 1) Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the contractor's employees acting within the course and scope of their employment.
- 2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
  - a) \$1,000,000 each occurrence;
  - b) \$1,000,000 general aggregate;
  - c) \$1,000,000 products and completed operations aggregate; and
  - d) \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

- 3) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
- b. The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
  - c. The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.
  - d. The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
  - e. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

- f. The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.
- g. Notwithstanding subsection a of this section, if the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

13. Representatives and Notice

- a. Representatives. For the purpose of this contract, the individuals identified below are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives:

For the State:

Name \_\_\_\_\_ Title \_\_\_\_\_

For the Contractor:

Name \_\_\_\_\_ Title \_\_\_\_\_

- b. Authority. With respect to the representative of the State, such individual shall have the authority to \_\_\_\_\_, inspect and reject services, approve invoices for payment, and act otherwise for the State, except with respect to the execution of formal amendments to or termination of this agreement pursuant to paragraphs \_\_\_\_ and \_\_\_\_.
- c. Notices. All notices required to be given by the parties hereunder shall be hand delivered or given by certified or registered mail to the individuals at the addresses set forth below. Either party may from time to time



designate in writing substitute addresses or persons to whom such notices shall be sent.

For the State:

Individuals Name :

Department and Division:

Address:

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For the Contractor:

Individuals Name :

Company Name:

Address:

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14. Assignment and Successors

The Contractor agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State [which shall not be unreasonably withheld]. Except as herein otherwise provided, this agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by Section 4-9-318, CRS, provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this contract. Such assignment shall not be deemed valid until receipt by such controller -- as distinguished from the State Controller -- and the Contractor assumes the risk that such written notice of assignment is received by the controller for the agency, department, or institution involved.

15. Force Majeure

Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

16. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the named Contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

17. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et. seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et. seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et. seq.*, CRS, as now or hereafter amended.

18. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

19. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

20. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

21. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance, or effect beyond the termination date of the contract shall survive such termination date and shall

be enforceable by the State as provided herein in the event of such failure to perform or comply by the Contractor.

22. Modification and Amendment

This contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

23. Reporting

Unless otherwise provided, in service contracts having a performance term longer than three (3) months, the Contractor shall submit, on a quarterly basis, a written program report specifying progress made for each activity identified in the Contractor's duties and obligations, regarding the performance of the contract. Such written analysis shall be in accordance with the procedures developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of the Contractor and failure to comply may result in delay of payment of funds and/or termination of the contract. Required reports shall be submitted to the State not later than the end of each calendar quarter, or at such time as otherwise specified.

24. Confidentiality of Records

The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with the contract. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, or guardian. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information. The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its employees, agents and subcontractors, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted. No confidentiality requirements contained in this contract shall negate or supersede the provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

25. COMPLIANCE WITH APPLICABLE LAW

The Contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable Federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended,

which are incorporated herein by this reference as terms and conditions of this contract. The Contractor shall also require compliance with these statutes and regulations in subcontracts and subgrants permitted under this contract. The Federal laws and regulations include:

Age Discrimination Act of 1975	42 U.S.C. Sections 6101, <i>et seq.</i>
Age Discrimination in Employment Act of 1967	29 U.S.C. 621-634
Americans with Disabilities Act of 1990 (ADA)	42 U.S.C. 12101, <i>et seq.</i>
Equal Pay Act of 1963	29 U.S.C. 206(d)
Immigration Reform and Control Act of 1986	8 U.S.C. 1324b
Section 504 of the Rehabilitation Act of 1973	29 U.S.C. 794
Title VI of the Civil Rights Act of 1964	42 U.S.C. 2000d
Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e
Title IX of the Education Amendment of 1972	20 U.S.C. 1681, <i>et seq.</i>
Section 24-34-302, <i>et seq.</i> , Colorado Revised Statutes 1997, as amended	

The Contractor also shall comply with any and all laws and regulations prohibiting discrimination in the specific program(s) which is/are the subject of this contract. In consideration of and for the purpose of obtaining any and all Federal and/or State financial assistance, the Contractor makes the following assurances, upon which the State relies.

- a. The Contractor will not discriminate against any person on the basis of race, color, national origin, age, sex, religion and handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of work under this contract.
- b. At all times during the performance of this contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or

activities performed by the Contractor, or be subjected to any discrimination by the Contractor.

The Contractor shall take all necessary affirmative steps, as required by 45 CFR 92.36(e) and (Colorado Executive Order, Procurement Rules), to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies, equipment, construction, and services purchased under this contract.

26. Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this contract, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform the services and/or deliver the supplies covered by this contract. The Contractor warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform this contract, without reimbursement by the State or other adjustment in contract price. Additionally, all employees of the Contractor performing services under this contract shall hold the required licenses or certification, if any, to perform their responsibilities. The Contractor further certifies that, if it is a foreign corporation or other entity, it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of necessary licenses, certifications, approvals, insurance, permits, etc. required for the Contractor to properly perform this contract, shall be grounds for termination of this contract by the State for default.

27. Litigation Reporting

Unless otherwise provided, the Contractor shall promptly notify the State in the event that the Contractor learns of any actual litigation in which it is a party defendant. The Contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves services provided under this contract and which has been filed in any Federal or State court or administrative agency, shall deliver copies of such document to the representative designated in this contract, or in absence of such designation, to the chief executive officer of the department, agency, or institution executing this contract on behalf of the State.

28. Venue

The parties agree that venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

29. Maintenance of Records

The Contractor shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the operation of

programs or the delivery of services under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed with the following qualification: If an audit by or on behalf of the federal and/or state government has begun but is not completed at the end of the three (3) year period, or if audit findings have not been resolved after a three (3) year period, the materials shall be retained until the resolution of the audit findings. All such records, documents, communications and other materials shall be the property of the State, and shall be maintained by the Contractor in a central location and the Contractor shall be custodian on behalf of the State.

30. Audit, Inspection of Records, and Monitoring

The Contractor shall permit the State, Federal Government, or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof, or to evaluate the Contractor's performance hereunder. The Contractor shall also permit these same described entities to monitor all activities conducted by the Contractor pursuant to the terms of this contract. As the monitoring agency may in its sole discretion deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

31. Federal Audit Provisions

The Office of Management and Budget (OMB) Circular No. A-133 Audits of States, Local Governments, and Non-Profit Organizations defines audit requirements under the Single Audit Act of 1996 (Public Law 104-156). All state and local governments and non-profit organizations expending \$500,000 or more from all sources (direct or from pass-through entities) are required to comply with the provisions of Circular No. A-133. The Circular also requires pass-through entities to monitor the activities of subrecipients and ensure that subrecipients meet the audit requirements. To identify its pass-through responsibilities, the State of Colorado requires all subrecipients to notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed \$500,000.

32. Conflict of Interest

- a. During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships



which conflict in any way with the Contractor fully performing his/her obligations under this contract.

- b. Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, the Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Contractor's fully performing his/her obligations to the State under the terms of this contract, without the prior written approval of the State.
- c. In the event that the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.
- d. The Contractor (and subcontractors or subgrantees permitted under the terms of this contract) shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent of the Contractor, subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
  - 1. The employee, officer or agent;
  - 2. Any member of the employee's immediate family;
  - 3. The employee's partner; or
  - 4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Contractor's, subcontractor's, or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to sub-agreements

**[NOTE: UNDER STATE OF COLORADO FISCAL RULE 3-1, THE "SPECIAL PROVISIONS" AND SIGNATURE PAGE ON THE FOLLOWING 3 PAGES ARE MANDATED FOR USE IN ALL STATE OF COLORADO CONTRACTS.]**

**[THE FORMAT OF THE SPECIAL PROVISIONS MUST REMAIN AS IT IS SHOWN. DO NOT CHANGE THE FONT, PAGINATION, ETC.]**

# SPECIAL PROVISIONS

(The Special Provisions apply to all contracts except where noted in *italics*.)

**1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1).**

This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

**2. FUND AVAILABILITY. CRS 24-30-202 (5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**3. INDEMNIFICATION.**

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

*[Applicable Only to Intergovernmental Contracts]* No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

**4. INDEPENDENT CONTRACTOR. 4 CCR 801-2.**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

**5. NON-DISCRIMINATION.**

Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

**6. CHOICE OF LAW.**

The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

**7. *[Not Applicable to Intergovernmental Contracts]* VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.**

The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

**8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**9. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and CRS 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.

## SPECIAL PROVISIONS

(The Special Provisions apply to all contracts except where noted in *italics*.)

10. *[Not Applicable to Intergovernmental Contracts]*. **ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.**

Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

# SPECIAL PROVISIONS

## SIGNATURE PAGE

### THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

**CONTRACTOR:****STATE OF COLORADO:**

BILL RITTER, JR., GOVERNOR

\_\_\_\_\_  
Legal Name of Contracting EntityBy \_\_\_\_\_  
Joan Henneberry, Executive Director  
Department of Health Care Policy and Financing\_\_\_\_\_  
Social Security Number or FEIN\_\_\_\_\_  
Signature of Authorized Officer**LEGAL REVIEW:**  
John W. Suthers, Attorney General\_\_\_\_\_  
Print Name & Title of Authorized Officer

By \_\_\_\_\_

**CORPORATIONS:**

(A corporate attestation is required)

**Attest (Seal) By** \_\_\_\_\_

(Corporate Secretary or Equivalent, or Town/City/County Clerk)

(Place corporate seal here, if available)

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

**STATE CONTROLLER:**

Leslie M. Shenefelt

By \_\_\_\_\_

Date \_\_\_\_\_

DRAFT